DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration

DEPARTMENT OF AGRICULTURE
Rural Utilities Service

Joint request for information:
Broadband Initiatives Program and Broadband Technology Opportunities Program

Docket Number: 0907141137–91375–05

Comments of the New America Foundation *et al.*

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PROMETHEUS RADIO PROJECT
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RURAL BROADBAND POLICY GROUP
SOUTHWEST ORGANIZING PROJECT,
TEXAS MEDIA EMPOWERMENT PROJECT
THOUSAND KITES
TRIBAL DIGITAL VILLAGE

November 30, 2009

EXECUTIVE SUMMARY

On behalf of the New America Foundation et al. (NAF et al.) we are pleased to submit to these comments regarding the Broadband Initiatives Program of the Rural Utilities Service, Department of Agriculture, and the Broadband Technology Opportunities Program of the National Telecommunications and Information Administration, Department of Commerce. New America Foundation commends RUS and NTIA for their successful interagency implementation of the broadband-related programs of the American Reinvestment and Recovery Act of 2009. Through your extensive outreach and applicant support efforts, you have inspired much needed public discourse and are well on the way to spurring job creation and stimulating long-term economic growth and opportunity.

We offer the below recommendations for ways to improve the application and award process by emphasizing national and societal gain over the gain of individual applicants. NAF et al. offers the following recommendations to encourage comprehensive, collaborative projects, scalable middle mile deployments, and smaller, innovative projects. NAF et al. recommends RUS/NTIA establish greater transparency, enhance the public's ability to learn from the program, and further promote public participation at all levels. BTOP/BIP grants should target organizations and facilities with established community connections. We must revisit the definition of terms in the NOFA in order to reflect more accurately the current needs of proposed service areas.

In response to RUS and NTIA's Joint Request for Information, we offer the following recommendations:

- Use a single application for all of the three funding opportunities in BTOP.
- Maintain the current unified application for BIP and BTOP; however applicants should be able to select which of the programs will best fulfill the vision of the applicant projects.
- Make the entire application public and available online.
- Add specific features to the Application Database on www.broadbandusa.gov to improve functionality and enhance public engagement.
- Target workshops to specific disadvantage populations.
- Engage in proactive efforts to facilitate collaboration among potential applicants.
- Permit experts to review applications even if they consulted on other applications, so long as the applications they are asked to review are in different states.
- Prioritize Middle Mile ‘‘Comprehensive Community’’ projects with three stipulations:
    1. Define service to community anchor institutions as “middle-mile” to exempt infrastructure investment to anchor institutions from geographic service stipulations,
    2. Maintain strong open access and interconnection requirements to ensure infrastructure can be utilized to facilitate connectivity in the rest of the community; and,
    3. Create a comprehensive understanding of “anchor institution” to refer to any facility that houses a public computer center or provides a vital public or community service.

- Allocate a portion of the remaining funds available under the BIP and BTOP programs to promote a regional economic development approach to broadband deployment.
- Target regions with high unemployment rates for funding, though alternative measures of labor underutilization as a more accurate metric of economic hardship.
- Revise the program to target funding for projects in Native America and work directly with Native American groups and tribal governments to encourage projects in persistently unserved tribal areas.
- Establish a Tribal Priority for those Tribal Entities seeking to serve their own Tribal lands.
- Set aside $50 million for a small grants program consistent with the goals of BTOP.
- Support a diverse range of public computer centers.
- Promote more activity in the use of digital media production and education in computer centers and as an adoption strategy.
- Clarify that "advertised speeds" means "guaranteed speeds" to individual premises, simultaneously and during peak network congestion times, for purposes of both the definition of "underserved" and the latter stages of the review process in which carriers may demonstrate their speeds in the areas proposed for service.
- Eliminate the requirement that projects to community anchor institutions have to be in "unserved" or "underserved" areas.
- Treat all five purposes provided in ARRA as equally important.
- Waive or amend the requirement for census block data such that communities can demonstrate that they meet the definition for "underserved" in other ways, such as statistically-significant data, that are more feasible, less burdensome, and just as rigorous. Alternatively, the FCC should require that all providers make these data publicly available.
- Make public the content of all service area challenges and require challengers demonstrate that currently available broadband is based on actual speeds that are independently verifiable.
- Permit applicants to respond to any challenges.
- Maintain the requirement that any network funded under the BTOP be open and nondiscriminatory and interconnect with other networks.
- Ensure the non-discrimination and interconnection requirements on infrastructure funded from BIP/BTOP continue with the sale or transfer of the infrastructure.
- Require that a portion of proceeds from a sale or transfer of infrastructure or equipment initially funded by BIP/BTOP funds be used to create a "Digital Excellence Fund" to allow for funding of further projects.
- Support a best practice model for project budgets.
- Clarify eligible costs in respect to OMB cost principles
- Do not permit States to rank projects for consideration. If States are allowed to prioritize, require of a point of contact for each State and make all rankings to NTIA and RUS public. Require tribal government approval of projects on Native lands.

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I. INTRODUCTION

New America Foundation et al. (NAF et al.) commends RUS and NTIA for their successful interagency implementation of the broadband-related programs of the American Reinvestment and Recovery Act of 2009. Through your extensive outreach and support, both agencies have inspired much needed public discourse and taken important first steps to spur job creation, stimulate long-term economic growth and drive access and adoption to essential broadband. We further commend the level of due-diligence the both agencies undertook to ensure only the most qualified applicants and projects would receive funding. The next and final round of funding for the Broadband Technology Opportunities Program (BTOP) and Broadband Infrastructure Program (BIP), offer a pivotal opportunity for NTIA and RUS to improve and refine the application process and guidelines to encourage innovative projects and new applicants.

Though we are strong supporters of the BTOP and BIP programs as established by ARRA, we have many areas of concern with the way it was been interpreted by the first Notice of Funding Availability (NOFA). In particular the rules of first NOFA had the effect of limiting BTOP to a small subset of American communities and discouraging most projects that would connect community anchor institutions such as schools, libraries, first responders, and health care facilities. Although the ARRA assigns five co-equal purposes to the BTOP program, the first NOFA prioritized the first two purposes (serving "unserved" and "underserved" areas), creating prerequisites for projects that address the other three purposes (community anchor institutions/vulnerable populations; public safety; and job creation/economic development). Communities could not apply for funds to build capacity to schools, libraries, first responders, and health care facilities—all of which require 100 *Megabit* or *Gigabit*+ connection speeds—because they are located in neighborhoods where residents can purchase consumer services of several hundred *kilobits* per second.

NTIA and RUS attempted to correct this by allowing anchor institutions to apply as middle-mile, but the rules still created considerable barriers for anchor institutions to apply for infrastructure funding. We do believe this was the intent of NTIA and hope that it will make the appropriate revisions in the second NOFA to enable a broader array of communities and community institutions to apply. We support the idea of prioritizing middle mile ''Comprehensive Community'' projects as an effective use of the remaining funds and urge both NTIA and RUS to develop rules that encourage these type of projects. Given the limited funding remaining, building high-capacity infrastructures to connect community anchor institutions is the most in line with all of the purposes of ARRA and cost-effective use of the funds. This approach would allow for the deployment of scalable infrastructure to provide access and drive adoption. With proper openness and interconnection requirements the infrastructure could be further leveraged to provide connectivity in the rest of the community.

During the first round of funding for BTOP and BIP, nearly 2200 applications requesting a total of $28 billion were submitted. The number of applications and amount requested demonstrated the interest and demand for funding, but also the weighted focus of projects in the first round. As NTIA and RUS are well aware, one applicant alone submitted 158 applications requesting a total of nearly $158,000,000. Another submitted 113 applications for nearly $53

million and a third submitted 40 applications for $29 million. Five individual entities accounted for 363, or roughly sixteen percent, of all of the applications. These figures reveal the relative narrowness of the applicant pool.

To address this issue, the New America Foundation et al. together with a consortium of public interest and community organizations respectfully submit these recommendations to improve the BTOP and RUS programs. NAF et al. recommends RUS/NTIA establish greater transparency, enhance the public's ability to learn about the program, and further promote public participation at all levels. Our goal is to make the process simpler for the applicants while increasing the quality of funded projects and achieving the long-term goals of universal broadband accessibility and sustainable adoption. BTOP and RUS grants should target organizations and facilities with established community connections and holistic projects that drive both access and adoption. To this end, NAF offers the following recommendations to encourage comprehensive, collaborative projects, scalable middle-mile deployments, and new innovative projects and applicants.

II. THE APPLICATION AND REVIEW PROCESS

A. Streamlining the Application Process

Recommendations:

- Use a single application for all of the three funding opportunities in BTOP.
- Maintain the current unified application for BIP and BTOP; however applicants should be able to select which of the programs will best fulfill the vision of the application.

NAF *et al.* believe it is important for NTIA and RUS to consider changes to the application process to make it easier and less burdensome for applicants. We strongly urge NTIA or RUS to do so in a manner that does not inhibit the necessary due-diligence required to evaluate applications. Despite the lengthy application process, it is important to recognize that NTIA and RUS still received nearly 2200 applications. Given that the next round of funding will be the last, it is imperative that NTIA and RUS allocate the remaining funds to deserving applicants and projects.

A modest change to the application process that would be beneficial, particularly for encouraging holistic projects, is to create a single application for all programs, rather than requiring separate applications for each program within BTOP and/or BIP. Applications for funding from BTOP were required in the first NOFA to submit separate applications for Infrastructure, Public Computer Center or Sustainable Broadband Adoption projects. While this process guided applicants in identifying how their project should be funded under BTOP, the process was convoluted for applicants seeking to implement innovative and holistic projects fulfilling multiple core purposes of BTOP. Often a prerequisite step in bringing Public Computer Centers and Sustainable Broadband Adoption Programs to unserved and underserved areas is providing the necessary connectivity through infrastructure development. The complexity of application process was further increased for applicants seeking to combine

infrastructure projects in rural areas, requiring the applicant to first apply for funds through BIP while simultaneously applying for funds for other portions of the project under BTOP.

Separating the applications for each program under BTOP further encouraged applicants to have different partner organizations apply for different portions of the funding rather than encouraging an application that could meet multiple purposes. For example, in NAF's work assisting the Free Library of Philadelphia Foundation, the City of Philadelphia, and community organizations with a BTOP application, the original vision combined infrastructure development to create a multi-use network connecting city facilities, public safety facilities, and community anchor institutions, with sustainable broadband adoption and public computer center programs. Although there was substantial coordination between the groups, the requirement to file separate applications for each program within BTOP encouraged the groups to split up the proposal, with individual groups taking the lead on developing and submitting applications under each program. While the different projects were interdependent and would collaborate if funded, this process diminished the opportunity for the organizations to truly develop and submit a single, holistic proposal.

NAF *et al.* recommend that a single application for all of the three funding opportunities be used for the second, and final, application round. Significant portions of applications under BTOP are identical across all three applications, including Executive Summary, Project Purpose, and Eligibility Factors and represent the bulk of the application. Additional attachments can provide information particular to each of the programs as provided in the previous NOFA and first-round applications. This would not preclude NTIA from only funding certain aspects of a project, but would encourage the type of collaboration that was an important goal of the ARRA legislation and the first round of BTOP and BIP funding.

Relationship between BIP and BTOP

The first NOFA required "All applications to fund broadband infrastructure in proposed funded service areas which are at lease 75 percent rural" to apply for BIP.[1] Rural applicants could request for additional consideration under BTOP, but will not be considered for the program until first rejected by BIP. This convoluted process created considered difficulty for rural projects seeking to combine BTOP programs, such as a Public Computer Center, with broadband infrastructure. Moreover, the BIP program favored applications that proposed a higher percentage of loan funds. Although, loans and loan/grant combinations allow RUS to fund a large number of projects, they also make it considerably more difficult to develop sustainable infrastructure projects in rural areas. Given the inherent economic challenges of developing a viable business model in many rural areas, a loan even with favorable terms, creates a disincentive for deploying into areas where uptake of the service is uncertain and where the margins would be relatively small.

As a result, we believe rural applicants should not be required to apply to the BIP program. We recommend NTIA and RUS to maintain the current unified application, however applicants should be able to select which of the programs will best fulfill the vision of the application. By allowing rural projects to apply directly for BTOP funding, the streamlined

[1] 74 Fed. Reg. at 33105

requirements will encourage applicants to develop community-wide projects beyond just infrastructure, using the connectivity to further benefit the community and drive use through public computer centers and sustainable broadband adoption programs. This is especially true in Native America where broadband access is nearly non-existent. Despite being ignored by commercial providers, on a few Native lands, innovative projects have emerged, deploying networks to connect government buildings, community anchor institutions, and public computer centers. As provided in the recent report from NAF and Native Public Media "*New Media, Technology, and Internet Use in Indian Country: Quantitative and Qualitative Analyses*," successful projects often involved combining a network to connect tribal facilities with a public computer center to provide access and education to the community. Similar models are integral to spurring "comprehensive community" projects that NAF *et al.* believe should be targeted for the next round of funding.

B. Transparency and Confidentiality.

Recommendations:

- Make the entire application public and available online.
- Add specific features to the Application Database on www.broadbandusa.gov to improve functionality and enhance public engagement.

Currently, www.broadbandusa.gov makes only limited information on applications publicly available. The information listed includes lead applicant, project type, and the state where the proposed funded target area is located. While the executive summary is available as a PDF, no other pieces of the application are publicly available. Further, the application database represents an untapped resource for broadband related projects. Beyond the lack of transparency, the lack of disclosure of broadband applications limits the ability for researchers to compile case studies and models of the different types of projects seeking funding from BIP/BTOP, a first step in studying the efficacy of the program and the viability of funded projects.

NAF et al. recommend the entirety of the applications be made public and available online. The increased transparency will help to ensure that all applicants are acting in the public interest as required by statute. In addition, NAF et al. recommend the Application Database on www.broadbandusa.gov should have additional features to improve functionality and enhance public engagement:

- Present service area on a more granular level, such as counties, to allow for greater detail in locating proposed service area.
- Fields should correspond to fields on application and in search results.
- All fields should be searchable.
- Add advanced search features, such as the ability to sort by each field and search within a search.
- Add ability to output search results as a comma-separated-values file.
- The database should have an open API so users can more easily access the data and extend the database functionality.
- There should be a clear statement of public license of the available data.

- Each application should have a unique reference number or code.
- Public Notice responses should be indexed and searchable by submitter.

C. Outreach and Support.

Recommendations:

- Target workshops to specific disadvantaged populations.
- Engage in proactive efforts to facilitate collaboration among potential applicants.

We commend NTIA and RUS for their outreach efforts during the first round of funding. However, both agencies will need to substantially expand outreach efforts for this next round in order to ensure that a diverse set of organization have the necessary information to apply for funding. This will involve reaching out to specific groups, improving on-line resources, and create avenues to facilitate collaboration and information sharing among potential applicants. An essential component of this effort should be targeted workshops to specifically reach out to marginalized, minority and Native America populations. Through targeting these workshops to groups and areas that have consistently lacked access to telecommunications and who lag behind others in terms of broadband and technology adoption, NTIA can ensure such groups are aware of the program and encourage the development of innovative projects and collaboration. In addition, NTIA and RUS should consider targeting workshops in areas particularly hit by economic hardship. Broadband is an important driver of economic developments and workshops in these areas would help to spur local governments, businesses and community groups to engage with the BTOP and BIP programs.

Although, the workshops are beneficial, there is obviously a limit to the number of workshops that can be held and how many potential applicants can attend. Therefore NTIA and RUS also should provide as much information as possible through resources such as the FAQs page and application guide published for the previous round of funding. These resources were useful, but also very limited in their scope. In particular, applicants would have substantially benefited from a much more detailed explanation of the mechanics of submitting an applications, such as how to set-up the required federal identification numbers. We encourage NTIA and RUS to develop resources and guides to simplify the application and process for smaller organization and entities without full-time grant staff. Beyond that, NTIA and RUS could also develop and publish a set of best practices for applicants, based upon awarded projects. This could be particularly useful given the limited public disclosure of applications during the first round.

In addition, numerous groups may have been interested in applying together with other proposals, but were unable to find out what other groups were preparing an application that they could collaborate with. Given both NTIA and RUS interest in creating collaboration among a number of different entities, we recommend a proactive effort to facilitate collaboration among potential applicants. This could come in the form of on-line database of potential grantees that is searchable or even creating space at the workshops for people to connect with potential collaborators. Moreover, the connections could be useful for attracting bids from sub-contractors to complete an awarded project.

D. NTIA Expert Review Process.

Recommendations:

- Permit experts to review applications even if they consulted on other applications, so long as the applications they are asked to review are in different states.

In the previous round of funding, an expert who participated, either in consultation or in partnership with an application was barred from assisting RUS/NTIA in application review. We commend RUS/NTIA for its efforts to prevent conflicts of interest, but the limitation was counterproductive and unnecessary. The pool of experts capable of assessing the validity, sustainability, and benefits of a project in this subject area is already enormously small. Compounded by the fact that the job is an unpaid, volunteer commitment, and there were a very limited number of experts qualified and willing to serve as reviewers.[2] We propose a reasonable policy of permitting experts to review applications even if they consulted on other applications, so long as the applications they are asked to review are in different states.

III. POLICY ISSUES ADDRESSED IN THE NOFA

A. Funding Priorities and Objectives.

Recommendations:

- Prioritize Middle Mile ''Comprehensive Community'' projects with three stipulations:
  1. Define service to community anchor institutions as "middle-mile" to exempt infrastructure investment to anchor institutions from geographic service stipulations,
  2. Maintain strong open access and interconnection requirements to ensure infrastructure can be utilized to facilitate connectivity in the rest of the community; and,
  3. Create a comprehensive understanding of "anchor institution" to refer to any facility that houses a public computer center or provides a vital public or community service.
- Allocate a portion of the remaining funds available under the BIP and BTOP programs to promote a regional economic development approach to broadband deployment.
- Target regions with high unemployment rates for funding, though alternative measures of labor underutilization as a more accurate metric of economic hardship.
- Revise the program to target funding for projects in Native America and work directly with Native American groups and tribal governments to encourage projects in persistently unserved tribal areas.
- Establish a Tribal Priority for those Tribal Entities seeking to serve their own Tribal lands.
- Set aside $50 million for a small grants program consistent with the goals of BTOP.
- Support a diverse range of public computer centers.
- Promote more activity in the use of digital media production and education in computer centers and as an adoption strategy.

[2] Note NSF conflict of interest policy http://www.nsf.gov/pubs/policydocs/pappguide/nsf09_29/gpg_2.jsp#IIex2

2. Middle Mile ‘‘Comprehensive Community’’ Projects.

The first funding round defined a community anchor institutions as an “end-user” and a network with the predominant purpose of connecting these institutions as a last-mile project. This categorization posed a major challenge to holistic proposals, combining a network backbone with community programs, such as Public Computer Centers or Sustainable Broadband Adoption programs at these institutions because the of the last-mile project requirements of demonstrating the coverage area were unserved or underserved and that the network serve the entire census block.[3] These selection criteria echoed the only part of the guiding principles of the BTOP program, and failed to encourage the projects with most potential to meaningfully affect the impact of broadband in disadvantaged communities, and promote the deployment of infrastructure that will remain viable and scalable in the long-term. NTIA attempted to mitigate this by clarifying that network deployments connecting just community anchor institutions could apply under the middle mile category.[4]

Although the ARRA assigned five co-equal purposes to the BTOP program, the NOFA prioritizes the first two purposes (serving “unserved” and “underserved” areas), creating prerequisites for projects that address the other three purposes (community anchor institutions/vulnerable populations; public safety; and job creation/economic development). To address these concerns in the next round, NAF et al. recommend RUS/NTIA Prioritize Middle Mile ‘‘Comprehensive Community’’ projects with three stipulations: 1) Define service to community anchor institutions as “middle-mile” to exempt infrastructure investment to anchor institutions from geographic service stipulations, 2) Maintain strong open access and interconnection requirements to ensure infrastructure can be utilized to facilitate connectivity in the rest of the community, and 3) Create a comprehensive understanding of “anchor institution” to refer to any facility that houses a public computer center or provides a vital public or community service.

As the Commission observed in its report on rural broadband, in rural areas across the country “middle-mile facilities may have insufficient capacity, causing the transmission speed on otherwise adequate last-mile broadband facilities to come to a crawl or stall before the data reach the Internet backbone,” and “even when the last-mile provider acquires access to adequate middle-mile facilities, that access may be prohibitively expensive.”[5] As another commenter noted, most rural local access networks have access to exactly one provider to connect to the backbone.[6] As a result, total capacity costs are increasing much faster than the razor thin profit margins of many rural ILECs and WISPs. As network usage increases, these small rural broadband providers are buying more and more capacity to handle the increased traffic. Without a substantial investment to bring both adequate and affordable middle-mile fiber connectivity to

[3] “infrastructure project the predominant purposes of which is provide service to end users or end-user devices” 74 Fed. Reg. at 33108
[4] http://www.broadbandusa.gov/files/BIP-BTOP_FAQ.pdf
[5] FCC Rural Broadband Report, ¶ 114, *supra note* 1.
[6] *See* footnote 286, *Id.*

rural communities, rural networks will hit a wall in terms of speed and pricing as the capacity costs associated with increased traffic to the backbone will grow faster than profits.[7]

However the increasing cost of transporting traffic from local access networks to the Internet is not just isolated to rural areas. Given the substantial consolidation over the past decade, control of the vital interconnection points and routes in urban and suburban areas, has become consolidated into the hand of a few large telecommunications companies. In addition, deregulation of the "special access" lines in markets across the country is forcing competitive broadband providers (those that do no own their own transport facilities) such as ILECs, to deal with excessive fees and unreasonable terms of service by special access providers.[8] This problem has implications not just for the wired world but also increasingly for next-generation wireless "4G" cellular networks, WiMax and Wi-Fi networks – where, for example, wireless providers such as T-mobile and Sprint-Nextel, who lack their own wireline infrastructure, often must utilize backhaul and special access links that are controlled by their main competitors, AT&T and Verizon.[9]

As part of this effort, the NTIA and RUS should prioritize a substantial portion of the remaining funding for the purposes of building high-speed connections to libraries, schools, hospitals and other community anchor institutions. The benefits of this approach are two-fold. First, these community anchor institutions gain access to future-proof broadband facilities, allowing them to provide advanced services and applications to benefit to their local communities – including the greatest benefits to those who are most likely to lack access including low-income, disabled, and elderly residents. Libraries and schools and other community institutions can become community hubs for high-speed connectivity, providing opportunities for education and employment help. In addition, schools and libraries can also become community "hot spots", utilizing WiFi or WIMAX technology to provide broadband access to nearby households.[10]

Second, communities can leverage the excess capacity on these fiber infrastructures to provide essential middle-mile, and other interconnection access for all broadband providers in a local community. In order to maximize the benefits of any BTOP or BIP funding for high-capacity fiber POPs to community anchor institutions, these networks should be required to allow for open, wholesale access to their excess capacity to any for-profit or non-profit broadband provider – allowing the infrastructure to spur high-speed connectivity into the rest of the community.

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[7] Also *see* Consolidated Comments of Microsoft Corporation, GN Docket No. 09-40, April 13, 2009, at 7, http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520211388, "We understand from some network operators, for example, that the local cost of upgrading wires and distributing broadband is not a hurdle. The marginal cost of adding subscribers to broadband systems can be more than covered by subscriber fees. However, rural or remote providers cannot take advantage of those economics, because the cost of acquiring high-capacity facilities between the Internet backbone and the community is too high."

[8] *See* FCC Rural Broadband Report, ¶ 114, *supra note* 1.

[9] *See* T-Mobile, "Reply Comments," Federal Communications Commission, WC Docket No. 05-25, August 15, 2007, http://www.usdoj.gov/atr/public/workshops/telecom2007/submissions/227837.htm.

[10] *See* Comments of the Consumer Federation of America and Consumers Union, GN Docket No. 09-29, at 4, http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520203357.

These types of projects are not only replicable, but also scalable. Japan instituted a pair of complimentary programs under their e-Strategy Priorities program to specifically target rural areas. The first program, *Local Information Exchange Infrastructure Preparation Program* was established by the MIC in 1998 to provide funding for local governments to build and interconnect public broadband networks as middle-mile fiber networks connecting community institutions—local schools, hospitals, town offices, health centers, train stations, libraries, and community centers.[11] A second program initiated in 2002, *Open Access of Public Fiber Network Program* was initiated by the MIC opened up these local, middle-mile networks by allowing private sectors to expand fiber connectivity to provide end-user access at local households.[12]

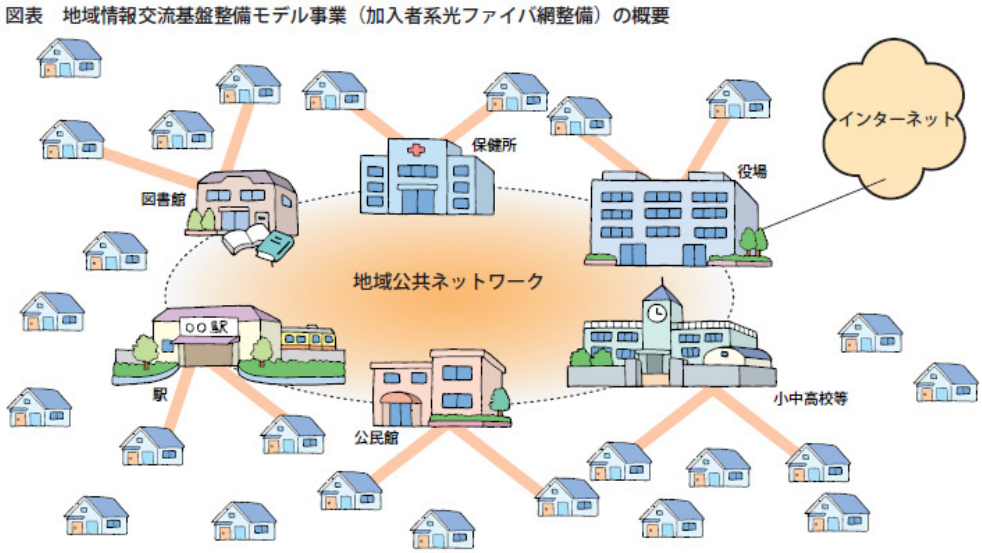

Figure 1. Image of Local Information Exchange Infrastructure Preparation Program—Fiber Deployment. Community Public intranet is connected among library, station, community center, local government office, and schools. Opening the intranet up to private sectors and non-porfit organizations allows the infrastructure to expand to connect individual households.[13]

Define service to community anchor institutions as "middle-mile"

As mentioned, designating networks connecting community anchor institutions as last-mile networks often dissuaded these types of holistic projects from applying during the first round. The same can be said for prioritizing middle-mile connectivity with the last-mile requirements to provide service to an entire census block. Rather, NTIA should recognize the scalability of high-bandwidth deployment and define service to community anchor institutions as "middle-mile" to exempt this infrastructure deployment from the geographic service stipulations

[11] The MIC Regional Communications Development Division. "Local Information Exchange Infrastructure Preparation Program" *2006 Local Information and Communication Development Policy*, established by The MIC. 2006. (translated) http://www.soumu.go.jp/main_sosiki/joho_tsusin/top/tiiki_kosin.pdf
[12] "Open access of Local Public Fiber Network" *2006 Local Information and Communication Development Policy*, established by the MIC. 2006. http://www.soumu.go.jp/main_sosiki/joho_tsusin/top/tiiki_kosin/pdf/01_10.pdf
[13] The figure is adopted from the MIC White Paper 2002, chapter 3 Trend of Information and Telecommunication Policy. p.233. http://www.soumu.go.jp/johotsusintokei/whitepaper/ja/h14/pdf/E3030000.pdf

imposed on last-mile deployments. NAF *et al.* further recommend that RUS/NTIA prioritize some of the remaining funds allocated for broadband deployment for the purposes of providing high-speed fiber connections of no less than 100 Mbps, symmetrical to community anchor institutions. This proposal has received support from a broad range of groups including Microsoft, the American Library Association, and Educause.[14] If implemented properly, this focus would have a long-term multiplier effect on broadband deployment and competition by lowering the barriers to entry for last mile providers as well as drive adoption and use by the whole community.

Open access and interconnection requirements

It is imperative that NTIA and RUS maintain strong open access and interconnection requirements to ensure infrastructure can be utilized to facilitate connectivity in the rest of the community. These requirements can help ensure that eligible projects can maximize the potential of the network, by first bringing the initial connectivity to the community institutions before deploying last-mile service. These anchor institutions could further serve has interconnection hubs, providing co-location space for broadband providers in the community. In addition, in rural areas where the fiber infrastructure will need to be newly constructed, it may be the only available high-capacity infrastructure to facilitate broadband connectivity in the area. A similar proposal was put forth by Consumer's Union and Consumer Federation of America in the FCC rural broadband proceeding, which called for a priority on projects that bring middle-mile fiber "down the major roads of rural America," where the middle-mile end points or POPs could be local government buildings, public housing, schools, and libraries.[15]

This would mirror a similar effort in Japan, through the *Open Access of Public Fiber Network Program,* initiated by the MIC in 2002.[16] Through this program, the MIC funded one-third of the necessary expenses to local governments to build public fiber networks with the requirement that the network be open to private telecommunication sectors and non-profit organizations. Eligible expenses included fiber connectivity, wireless point-to-point (FWA), electronic optical converters and amplifiers, and other equipment.[17] By 2005, 23 local governments received a total of $35.8 million and 74 municipal networks were opened to private telecommunication providers and non-profit organizations.[18]

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[15] Comments of Consumer Federation of America, at 2 – 4, *supra note* 16.
[16] "Open access of Local Public Fiber Network" *2006 Local Information and Communication Development Policy*, established by the MIC. 2006. http://www.soumu.go.jp/main_sosiki/joho_tsusin/top/tiiki_kosin/pdf/01_10.pdf
[17] The MIC Telecommunications in Kinki Area: "Local Information Exchange Infrastructure Preparation Program" http://warp.ndl.go.jp/cgi-bin/netwp/BNWPLinkChk2.cgi?fl=www.ktab.go.jp&mt=000000001607&cl=0000000000012757&ln=http%3A%2F%2Fwww.ktab.go.jp%2Fpolicy%2Fkouryuu.htm and The MIC Telecommunications in Touhoku Area announcement of implementation of "Local Information Exchange Infrastructure Preparation Program". October-December, 2002. http://www.soumu.go.jp/soutsu/tohoku/hodo/h1410-12/1001b4202.html
[18] Open access of Local Public Fiber Network.

More comprehensive understanding of "anchor institution"

The statute specifies certain types of community anchor institutions as: "schools libraries, medical and healthcare providers....and other community support organizations and agencies that provide outreach, access, equipment and support services to facilitate greater use of broadband services by vulnerable populations."[19] Although the first NOFA did include institutions that "facilitate greater use of broadband services," in its definition of a community anchor institution, in the next NOFA the definition should be revised to focus on the value of an institution in the community. BTOP should focus its grants on bringing broadband to facilities with strong community ties, not just funding locations with Internet access in an effort to attract the public. This is in line with the focus of the Recovery Act and will yield more successful broadband programs by promoting greater community engagement, an essential component for successful adoption.[20]

The definition of "community anchor" should include institutions:

- That may not already have a public connection to the Internet, but do have strong community connections.
- That serves as a source of interaction, community news/media, or connection for the community, including non-traditional anchor institutions such as community arts centers, PEG production facilities, radio stations, etc.

The value of traditional institutions such as schools, libraries, and medical and healthcare providers is undeniable, but in many communities their role as anchors is shrinking and singularly prioritizing projects connecting them may not maximize the value to the community. Consistently underfunded, many libraries have drastically scaled back their hours. In many cities, main branch libraries have stellar computer centers, while outer branches are all but defunct. As state budgets are strained by the current economic conditions, libraries funding can land on the chopping block. For example, the Philadelphia Free Library, a community anchor institution applied for Sustainable Broadband Adoption proposal for the first round of BTOP funding was at risk of closing due to a state budget crisis. In shrinking cities, some public and parochial schools have closed completely, but even the best schools are rarely open to the public.[21]

That this situation represents a woeful loss to local communities does not diminish its reality. In many communities, local residents may identify these institutions as bureaucratic and inaccessible, diminishing their value as public computer centers. Restrictions on E-Rate funding for Schools and Libraries further complicates the ability of these institutions to share their bandwidth with the surrounding community. The restrictions placed on school networks by e-Rate legislation can inhibit the inclusion of schools as key project partners or as community anchor institutions. During work by the New American Foundation in assisting with the Free Library of Philadelphia and the City of Philadelphia to apply for middle-mile infrastructure

[19] 74 Fed. Reg. at 33108
[20] Breitbart, Lakshmipathy, and Meinrath, *The Philadelphia Story*, the New America Foundation. Dec, 2007.
[21] The Philadelphia Inquier, *Libraries Post Warning of Oct. 2 Closing.* Inquirer Staff, Sept. 14, 2009 http://www.philly.com/inquirer/breaking/news_breaking/20090914_Libraries_post_notice_warning_of_Oct__2_closing.html

sustainable broadband adoption, one key element of due-diligence was identifying existing resources and infrastructure in the city with underutilized bandwidth that could be incorporated into a wider network. Identified infrastructure included underground fiber connecting schools, universities, as well as the main library backhaul and a privately owned dark fiber network. Unfortunately, these existing resources could not be leveraged to connect public computer centers, expanded to provide last-mile services to the hundreds of thousands underserved residents of Philadelphia because of e-Rate restrictions. Further, these institutions already had connectivity and were not necessarily the primary points of community engagement.

NAF et al. recommend a more comprehensive understanding of defining an "anchor institution" to refer to any facility that houses a public computer center or provides a vital public or community service. We note that media arts centers and community media centers are often the most effective public computer centers in an area. Consistent with our recommendations concerning anchor institutions and digital media equipment, above, we urge RUS/NTIA to build on this strength in drafting and publicizing the second round NOFA and in reviewing applications. RUS/NTIA should further recognize the wide variety of institutions that can serve as anchor institutions, such as locally-owned barbershops or bookstores, or a cafe that has publicly accessible computers and free Wi-Fi and hosts community events. RUS/NTIA should recognize this reality and deliver broadband to where people are already naturally congregating rather than trying to push people to connect to a narrow range of institutions. For the purposes of implementation in the NOFA, we propose that an anchor institution is any facility that houses a public computer center or provides a vital public or community service, as evidenced through the testimony of local residents.

2. Economic Development.

NAF et al. recommends RUS and NTIA consider giving priority to projects that promote a regional economic development approach to broadband deployment. Broadband investments cannot be successful as stand-alone actions, but must be implemented holistically. Broadband deployments can play a key role in regional economic development, especially by integrating workforce training, entrepreneurial development, educational opportunities, media production, and arts and culture. RUS and NTIA should target regions with high unemployment rates for funding; through alternative measures of labor underutilization. Official unemployment rates may fail to capture people who are underemployed or discouraged. Unemployment data can also be geographically broad. Unemployment data at a county level can capture extremely impacted sub-county areas along with wealthy areas. RUS and NTIA should consult with the Bureau of Labor Statistics to develop a geographically-refined and reliable indicator, such that 100% of an proposed service area could qualify as eligible for BTOP funding based solely on this economic indicator.

3. Targeted Populations.

RUS/NTIA should revise the program to target funding for projects in Native America. A recent report by Native Public Media and the New America Foundation, "*New Media, Technology and Internet Use in Indian Country: Quantitative and Qualitative Analyses*" substantiated the depth of the digital divide between Native America and the Nation as a whole.

Despite the study demonstrating interest and use of broadband and technology among Native Americans, access to broadband is both less available and more expensive than compared nationally. However, case studies documented in the report demonstrated the development of successful models of Digital Excellence in Indian Country when catalyzed by funding opportunities such as BIP and BTOP.

Unfortunately, requirements for the first round of funding excluded or de-prioritized many vulnerable groups. As a telling example of this, the Southern California Tribal Digital Village, arguably one of the strongest Native American proposals, only scored 56 when evaluated by RUS.[22] The reasons for this are many. For example 1 point out of 10 was awarded if an applicant was seeking a grant only, not a loan or loan/grant combination. A total of 9 points could be lost for this reason. Tribes for the most part do not have a surplus of cash. Matching funds for applications of this magnitude severely limit the ability of the tribe to establish a sustainable model, and as such a grant choice from the BIP/RUS program should not reduce the score of good tribal projects. However, given the scoring system for RUS tribes are at a substantial disadvantage, in that RUS favored applications that propose a higher percentage of loan funds.[23]

Further, tribes were at a severe disadvantage for qualifying for total grant funding under the remote area category, especially those tribes that reside in counties like San Diego, where there is no part of the county that is further than 50 miles from an urban/urbanized area. Tribes are rural both geographically and aesthetically. Tribes, by definition should be classified as "Remote," based on availability of/access to utilities and resources. In the case of the 17 Tribes in San Diego County which are in close proximity to urbanized areas, there has been no industry supported building out of infrastructure on these tribal lands, and they have no access to broadband Internet. Tribes should be able to achieve the "unserved" definition without issue. There are those rare occasions where there is access to services based on location or absorption by urban sprawl. None of these scenarios apply to the San Diego County tribes.

NAF et al. previously recommended rural applicants be allowed to apply directly to BTOP. We further recommend RUS/NTIA work directly with Native American groups and tribal governments to encourage projects in persistently unserved tribal areas. For example, BTOP could waive the 20% match requirements for tribal applicants, recognizing the lack of access to capital and credit due to Tribal budgets being federally based budgets with spending restrictions. RUS/NTIA should prioritize projects on Native lands submitted by Tribal Entities. Tribal entities looking to provide desired services to their communities often are *de facto* broadband carriers of last resort due to market conditions that redlined Tribal communities from incumbent offerings. RUS and NTIA should consult with tribes to create a Tribal Priority to position Tribes as "carriers of first choice" which is consistent with the federal government's trust responsibility and the political legal classification of federally recognized Tribal Entities.

Regarding the creation of a Tribal Priority, NAF supports the joint comments submitted in this docket by the National Congress of American Indians, Native Public Media and the

[22] According to Matt Rantanen speaking at the National Congress of American Indians Tribal Telecom Subcommittee Listening Session. Requiring tribes to apply directly to BIP exemplified this and other challenges.

Southern California Tribal Chairman's Association Tribal Digital Village and recommends that NTIA and RUS seize upon this government-to-government opportunity to address the significant problems created by the application for Tribal applicants. The creation of a Tribal Priority would be a significant step in the correct direction to address the infamous and persistent lack of broadband in Indian Country.

4. Other Changes.

Small Grants Program

NAF *et al*. recommend the NTIA set aside $50 million for a small grants program to provide targeted grants for programs that are consistent with the goals of BTOP. S.6002(h)(3) requires the NTIA to consider whether a grant applicant is an "economically disadvantaged small business concern as defined under section 8(a) of the Small Business Act (15 U.S.C. § 637)." In addition, the act stresses the need to place projects within communities and economic development zones, and to provide opportunities for non-profits to apply (S.6001(b)(3)). All of these point to a desire by Congress to ensure that small entities have a meaningful opportunity to participate in the BTOP program. A small grants program would satisfy this mandate.

NTIA should set aside $50 million for a small grants program, including $30 million for last mile proposals, $10 million for public computer center proposals, and $10 million for sustainable broadband adoption. Individual grants should be capped at $250,000 for last-mile, $100,000 for public computer centers, and $100,000 for sustainable broadband adoption programs. Individual entities could be limited to three applications in each category. Using this approach, the NTIA could provide numerous small grants on a rolling basis for any of the purposes permitted by BTOP. The type of projects that might qualify for small grants include individual hotspots in public areas and anchor institutions, a single library replacing outdated computer workstations, or the production of public service announcements informing local residents of already available community technology resources. Based on our extensive fieldwork, NAF et al. expect that creating a window specifically for smaller entities will spur considerable participation by a diverse group of smaller community organizations and institutions.

In structuring the fund, the NTIA should consider how to streamline both the application process and the subsequent accounting measures, consistent with statutory requirements. NTIA could create a short form for reporting and could require small grants be completely spent in the first year. A small grants program would streamline the overall review process by moving small-scale applications out of the larger pool, allowing NTIA to complete the second round expeditiously. Small grant applications could be accepted and approved on a rolling basis in a 60-day window starting approximately when second round grants are announced. Especially if second round applications are public, small grant applicants could respond to gaps in the applicant pool. Consistent with the OMB Guidance of February 18, 2009, the NTIA should allocate a portion of the funds authorized for administration of the BTOP program to meaningful outreach and training for small entities that would be eligible for grants and loans provided by this fund.

Diverse Range of Public Computer Centers

Similar to the challenges with anchor institutions, NTIA can most effectively achieve the goals of BTOP by supporting diverse range of public computer centers. The current orientation of the program is targeted on expanding large, central facilities that can result in a variety of problems. Centralized facilities can be inaccessible, especially if they follow pre-existing patterns of resource concentration. In rural areas, resources are often concentrated in the county seat, requiring people in outlying areas to drive long distances to reach them; in the winter, this drive can be prohibitive. Even in urban areas, especially in areas such as Detroit that lack public transportation, expanding the computer center of the main branch of the public library, while it would ease congestion at that location, would not suffice in providing access to all of the city's residents. The NTIA's Public Computer Center program should support innovative approaches to this problem, such as decentralized micro-centers of two to four workstations.

In its Public Computer Center application, Spelman College in Atlanta proposed to address this problem through "The Mobile Extension Center Platform... a fifteen passenger van that will be converted into a Mobile unit with a Tachyon Networks Satellite positioned on the roof of the vehicle. This system will be built to provide Mobile Internet Service. The van will be equipped with wireless technology as well as twenty PC computers. The concept behind the wireless technology van is to have an outside class-room as well as wireless access in an enclosed building that does not provide Internet Service."[24] A mobile resource such as this could provide flexible capacity in multiple areas of the city that lack facilities, as well as offering added capacity to main locations at peak times. While we have not had the opportunity to review the entire application, we commend Spelman for its innovative approach.

Geographic centrality may not be as important as accessibility. Being within walking distance is ideal. Where that is not the case, in urban areas, it may mean proximity to public transportation and in rural areas, major roads or junctions. Where possible, computer centers should integrate already-established bus programs for services such as Head Start, Community Action Agencies, Meals on Wheels, or Metro Mobility.

In addition, the total number of hours a facility is in operation may not be as important as having the facility be open outside of normal business hours. Having the right personnel is important for sustaining a successful public computer center. Single, large, central facilities are often ill-equipped to handle the diverse vulnerable populations who most need access to public computer centers. A resident of Woodstock, NY, reports that the local library public computer center attracts many of the city's homeless during the day, but the staff did not have the knowledge or experience to meet their needs while also continuing to serve the rest of the public. A resident of St. Paul, MN, notes that a local library's response to the influx of young people after school (who would occasionally argue over access to the limited number of computers) was to bring in a police officer. Meanwhile, there are youth recreation centers in the city that have no community technology capacity – no computers or broadband connection. Cultural competency and experience working with specific populations are essential criteria for evaluating public computer center proposals.

[24] http://www.ntia.doc.gov/broadbandgrants/applications/summaries/2070.pdf

Some additional best practices for accessibility include providing childcare and/or designated "family hours" for parents with their school-aged children; supporting software in languages other than English, including in non-Latin languages; and maintaining terminals that are adapted for use by the blind, deaf, and hard of hearing. In some instances, capacity like this might be best integrated into a larger public facility, while in some cases it might best be provided by an organization with specific experience in providing services to particular populations. For more detailed recommendations for anchor institutions and public computer centers, "Characteristics of Anchor Institutions," prepared by Main Street Project, included as an appendix.

Digital Media Equipment and Training

The Internet is a two-way medium. As a result, simply providing access only to basic computers and computer skills is like giving individuals a phone and teaching them to listen, but not speak. However, it appears that only a limited number of entities emphasized this strategy among the first round applications. Digital media skills demonstrate the value of broadband to program participants. Participants learn that the Internet is an interactive medium that they can shape to their needs. Digital media is a malleable tool because people choose their subject matter and can develop skills through pursuing their passion. Developing digital media skills among vulnerable populations can lead to more relevant content online, which aids in adoption. Producers become hubs with connections to the people they interview. Open centers of media production – even analog media such as community radio – typically have strong community ties. Advanced skills bring additional income-earning opportunities. Digital and social media skills are fast-becoming as essential in many workplaces as basic computer skills like email, search, and word processing.

For public school students, the integration of digital media programs into the classroom can have broad educational benefits. By giving them a cool tool and a multimedia outlet for their work, organizations like People's Production House (PPH) turn average New York City and Washington, DC, public school students into highly-motivated learners. PPH requires that they research and write out their radio work, which strengthens basic literacy. The students use the equipment and their interviewing skills to engage peers and adults, making them more invested in the school community. Digital media education can enhance personal and community health in a variety of ways, especially by establishing greater social connectivity. Though we can only conduct a survey of the first round applications, it appears that very few proposed using this effective strategy for sustainable adoption. We point to those from Citizens Media Group, Downtown Community Television Center, and ZeroDivide as examples of ones that did, though we have not reviewed those applications in their entirety. Digital Media Equipment and Training can serve as a driver of broadband adoption and we encourage NTIA to promote more activity in this area.

B. Program Definitions.

Recommendations:

- Clarify that "advertised speeds" means "guaranteed speeds" to individual premises, simultaneously and during peak network congestion times, for purposes of both the

definition of "underserved" and the latter stages of the review process in which carriers may demonstrate their speeds in the areas proposed for service.

- Eliminate the requirement that projects to community anchor institutions have to be in "unserved" or "underserved" areas.
- Treat all five purposes provided in ARRA as equally important.
- Waive or amend the requirement for census block data such that communities can demonstrate that they meet the definition for "underserved" in other ways, such as statistically-significant data, that are more feasible, less burdensome, and just as rigorous. Alternatively, the FCC should require that all providers make these data publicly available.

The first round funding requirements for last-mile infrastructure projects applying to BTOP were overly burdensome and due to the elusive definitions for "unserved" and "underserved." A dearth of publically available data on the level of granularity requested by the NTIA was often an insurmountable and costly burden to interested government and non-profit applicants. The data required is often only available from incumbent providers, favoring these applicants over organizations more likely to understand the needs of their communities.

While the first round NOFA allows for five-percent of project budget to cover pre-application costs, using these funds for the extensive level of surveying needed to meet the definitions of "underserved" and "unserved" does not adequately meet the defined purposes of the grant program. Defining "underserved" on advertised speed and availability is not reasonable nor does it allow for a level playing field for applicants by not allowing for definitions based on publically available data.

The NOFA required demonstrating that a proposed funded service area is "unserved" or "underserved" by census block—a level of granularity that depends on data that only the existing service providers can access without extraordinary efforts and cost. Many American cities, such as San Francisco, Miami, and Philadelphia, have engaged in extensive surveys of their community over the past few years, using multiple methodologies, including privately-conducted written and phone surveys of statistically-significant samplings and City-conducted community-wide surveys. Despite this, applicants would have to further re-survey the community at a far more granular level to meet the census-block requirement; a concomitant application cost that is simply not feasible.

Further, the definition of "underserved" has the effect of precluding any residential infrastructure program in an area where a minimal advertised level of broadband, even first-generation DSL, is generally available. The NOFA defined Broadband in terms of "advertised speeds, enabling carriers to preclude participation through advertised (and frequently exaggerated) maximum speeds rather than guaranteed minimum speeds.[25] This problem is compounded by the de facto veto the NOFA affords carriers to show that an area is not "underserved" by quoting aggregate speeds—not what they actually deliver. This outcome is patently unfair—carriers, who have an incentive to obfuscate service shortcomings, may

[25] Broadband is defined as "providing two-way data transmission with advertised speeds of at least 768 kilobits per second (kbps) downstream and at least 200 kbps upstream to end users. 74 Fed. Reg. at 33108

advertise speeds of up to 3 Mbps while refusing to guarantee those speeds (for example, cable modem systems are engineered as shared networks so speeds can drop dramatically as providers use larger and larger contention ratios). An application for funding for an alternative network that will deliver guaranteed speeds could be precluded by overstatements contained in carriers' advertising.

This preclusion occurs regardless of whether advertised speeds are actually delivered; whether service is affordable; whether systems are capable of serving all interested consumers (in many communities where DSL is advertised, residents and small businesses are refused service because circuits are tapped out); and whether the speed of service meets the needs of the consumer (for example, DSL and even cable modem service are woefully insufficient for home-based business and teleworking).

Further, it should be noted that the terms "unserved" and "underserved" appear only in S. 6001 (b)(1) and S. 6001 (b)(2) of ARRA, in reference to "consumers residing" in unserved and underserved areas. As such, the terms "unserved" and "underserved" should not be applied to the entities listed in S. 6001 (b)(3) through S. 6001 (b)(5), which include "schools, libraries, healthcare providers, community colleges, and other institutions of higher education, and other community support organizations and entities," as well as public safety agencies, job-creating strategic facilities located within a State-designated economic zone and organizations that aim to facilitate greater use of broadband service by vulnerable populations. Recognizing the importance of connectivity to these entities and the value that these entities produce in their communities, it was Congress's intent that applications from these entities not be limited by the terms "unserved" and "underserved." As such, applications from all entities listed under S. 6001 (b)(3) through S. 6001 (b)(5) should be considered on their merits, exclusive of the applicability of the terms "unserved" and "underserved," which are meant to regulate applications pertaining to residential services.

NAF et al. recommend the following to in the next and final round of funding:

First, clarify that "advertised speeds" means "guaranteed speeds" to individual premises, simultaneously and during peak network congestion times, for purposes of both the definition of "underserved" and the latter stages of the review process in which carriers may demonstrate their speeds in the areas proposed for service.

Second, since the Recovery Act does not prioritize any one purpose over any other, eliminate the requirement that projects to community anchor institutions have to be in "unserved" or "underserved" areas. Treat all five intervention areas as equally important and avoid making any of them (in this case, service to unserved or underserved) dependent on any others (for example, anchor institutions and vulnerable populations, public safety, and job creation and economic development). In a related fashion, eliminate the requirement that networks serving non-residential community anchor institutions also have to serve the entire census block. This will allow for more holistic projects as well as long-term cost efficiency, as elaborated in the *Prioritize Middle Mile "comprehensive Community" Projects* section.

Third, the NTIA should provide guidelines in defining proposed funded service areas based on publically available data such that communities can demonstrate "underserved" in other ways, such as statistically-significant data, that are more feasible, less burdensome, and just as rigorous. Alternatively, the FCC should require that all providers make the data publicly available, or make the form 477 data publically available.

C. Public Notice of Service Areas.

Recommendations:

- Make public the content of all service area challenges and require challengers demonstrate that currently available broadband is based on actual speeds that are independently verifiable.
- Permit applicants to respond to any challenges.

In the first round of funding, incumbent were allowed to challenge the identification of proposed service areas as unserved or underserved. However, those challenges were not made public and applicants were unable to respond. This process was patently unfair and contrary to the transparency requirements provided in ARRA. If incumbent challenges are again permitted, the challenges should be made publicly available in their entirety and challengers should be required to demonstrate that currently available broadband is based on actual speeds that are independently verifiable. Applicants must also be permitted to respond to any challenges.

D. Interconnection and Nondiscrimination Requirements.

Recommendation:

- Maintain the requirement that any network funded under the BTOP be open, nondiscriminatory and provide interconnection with other networks.

Pursuant to the statutory requirement that grantees serve the public interest,[26] any network funded under the BTOP must be open and nondiscriminatory and must interconnect with other networks. In requesting comments on *Interconnection and Nondiscrimination Requirements* outlined in section V.C.2.c of the July 9, 2009 NOFA RUS/NTIA explained they "are not inclined to make significant changes" to these requirements. NAF supports a continued commitment to these requirements. It is absolutely essential to require the network "connect to the public Internet directly or indirectly, such that the project is not an entirely private closed network."[27] Additional requirements such as "display[ing] any network management policies in a prominent location"[28] are critical to maintaining service transparency to end-users and mirror efforts by the FCC to provide much greater transparency to consumers.

NAF et al. further support the fifth requirement to "offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, on reasonable rates and terms to be negotiated with requesting parties. This includes both the ability

[26] (S. 6001 (e)(1)(C))
[27] 74 Fed Reg. at 33111
[28] 74 Fed Reg. at 33111

to connect to the public Internet and physical interconnection for the exchange of traffic."[29] In addition to fulfilling BTOP requirements, open networks offer a scalable infrastructure that is more viable in the long-term than closed networks, thereby ensuring a greater return on investment for taxpayers. Interconnection requirement are essential to spurring multi-use, multi-sectoral network rather than single purpose networks. Most importantly, only open, nondiscriminatory networks will ensure that free speech, the creation of content and full participation in civic society and the economy will remain unhindered.

E. Sale or Transfer of Project Assets.

Recommendation:

- Ensure the non-discrimination and interconnection requirements on infrastructure funded from BIP/BTOP continue with the sale or transfer of the infrastructure.
- Require that a portion of proceeds from a sale or transfer of infrastructure or equipment initially funded by BIP/BTOP funds be used to create a "Digital Excellence Fund" to allow for funding of further projects.

Infrastructure and equipment purchased using funds from BIP/BTOP have obligations for use, transparency, and interconnection. These obligations must continue to be fulfilled if the infrastructure, equipment, or property is sold, gifted, or otherwise transferred in ownership. Eligible costs for funding are largely restricted to infrastructure and equipment, and the obligation to fulfill the intended grant purposes must remain with these properties. Additionally, the agencies may approve a sale or lease if it is for adequate consideration, the purchaser, gifted, or otherwise new entity in ownership agrees to fulfill the terms and conditions relating to the project, and either the applicant includes the proposed sale or lease in its application as part of its original request for grant funds or the agencies waive this provision for any sale or lease occurring after the tenth year from the date the grant, loan, or loan/grant award is issued.

Further, NAF *et al.* recommend a portion of proceeds from a sale or transfer of infrastructure or equipment initially funded by BIP/BTOP funds be used to create a "Digital Excellence Fund" to allow for funding of further projects. Often localized projects are catalyzed by funding opportunities, as demonstrated by the case studies in the recent report from NAF and Native Public Media "*New Media, Technology, and Internet Use in Indian Country: Quantitative and Qualitative Analyses*."[30] The report studies six different examples of digital excellence in Native America to provide a replicable best-practices model. A key element of these projects was a source of seed funding. Having the opportunity to maintain a Digital Excellence Fund in part due to the sale of project assets initially funded by BIP/BTOP, RUS/NTIA will leverage these funds to continue broadband interventions in areas of need.

F. Cost Effectiveness.

Recommendation:

[29] 74 Fed. Reg. at 33111

[30] Morris, Traci L. and Meinrath, Sascha D. *New Media, Technology and Internet Use in Indian Country: Quantitative and Qualitative Analyses*. November, 2009.

- Support a best practice model for project budgets.
- Clarify eligible costs in respect to OMB cost principles

The NOFA had limited financial guidance for potential applicants, focused on grant versus match, a short list of eligible costs, specifying that applicants to BTOP needed to provide at least 20% eligible costs or request a waiver.[31] RUS/NTIA provided funds for "reasonable pre-application expenses in an amount not to exceed five percent of the award."[32] While these guidelines are effective at setting eligibility requirements, RUS/NTIA can further aide applicants. NAF recommends RUS/NITA support a best practice model for project budgets. This model can suggest cost breakdowns of budgets such as efficient ratios of programmatic versus operational costs of a project. RUS/NTIA can further aide prospective applicants with recommending infrastructure costs. RUS/NTIA guidelines can include recommendations for the cost of laying fiber or deploying wireless backhaul.

Clarify Eligible Costs in Respect to OMB Cost Principles

NAF et al. recommend further clarification on eligible and ineligible costs for applicants, particularly non-profit and tribal entities. The July 9, 2009 NOFA stipulates that "Eligible costs are consistent with the cost principles identified in the applicable OMB circulars"[33] but also specifies that some costs, such as those related to staffing or vehicle use, are ineligible, contradicting the OMB circulars. To avoid similar confusion in the forthcoming funding round, NTIA should remain consistent with OMB Cost Principles as well as specify if and which eligible costs differ pending on the type of organization applying.

G. Other. State Prioritization and Tribal Governments

Recommendation:

- Do not allow States to rank projects for consideration. If States are allowed to prioritize, require of a point of contact for each State and make all rankings to NTIA and RUS public. Require tribal government approval of projects on Native lands.

With regard to the role of the States in the grant and loan evaluation process, the NTIA should not delegate authority to the States and should not allow States to rank projects for consideration, as doing so would induce delay and confusion and would move part of the decision-making process outside of the clear boundaries of transparency established by ARRA. Recognizing that the NTIA has already met the statutory requirements regarding the consultation of the States and that, furthermore, the Statute does not require that the NTIA undertake a formal

[31] 74 Fed. Reg. at 33112
[32] 74 Fed. Reg. at 33112
[33] Department of Agriculture Rural Utilities Service and Department of Commerce National Telecommunications and Information Administration; Broadband Initiatives Program; Broadband Technology Opportunities Program; Notice of Funding Availability. Federal Register, Vol. 74 No. 30, July 9, 2009, 33104-33134.

consultation process with the States, the States should play a limited role in the process of selecting and evaluating projects in the second round. If NTIA and RUS continue to allow states to prioritize applications, it should encourage as much transparency as possible. To ensure the process is open to all applicants, state should disclose a point of contact at the Governor's Office that is handling project recommendations and the process that will be utilized to determine priority. All State recommendations to NTIA and RUS should be made public. They should be cataloged on the BroadbandUSA website and individual applications should be noted as recommended or not recommended.

Further, if RUS/NTIA chooses to continue with state prioritization of applications, this process should be revised in respect to proposed service areas on tribal land. During the first round, States were authorized to recommend preference of BIP/BTOP projects on tribal land. This raises questions of sovereignty and is confusing for tribal areas that cut across state boundaries. The Tribal government, consistent with the legal political classification of federally recognized Tribal entities, is a more appropriate reviewing agency than a State government. Applications from tribal entities should be exempt from review by the States.

III. CONCLUSION

NTIA and RUS have an extraordinary opportunity to promote the deployment and use of broadband services nationwide and to subsequently encourage job growth, education, economic advancement, access to knowledge and civic participation. Both programs must support diverse strategies across the country in order to achieve the statutory aims. More than the quantity of applications or the size of any particular one, the success of this program should be seen in the breadth of ideas and visions behind the applications.

Respectfully Submitted,

NEW AMERICA FOUNDATION
ACCESS HUMBOLT
ALLIED MEDIA PROJECTS
BENTON FOUNDATION
BINDLESTIFF STUDIOS
CALIFORNIA CENTER FOR RURAL POLICY
CENTER FOR MEDIA JUSTICE
CENTER FOR RURAL STRATEGIES
CENTER FOR SOCIAL INCLUSION
COLUMBIA UNIVERSITY CENTER FOR TECHNOLOGY INNOVATION AND COMMUNITY ENGAGEMENT
COLUMBIA TELECOMMUNICATIONS CORPORATION
CUWiN FOUNDATION
ESPERANZA PEACE AND JUSTICE CENTER
FIRST VOICE MEDIA ACTION
INSTITUTE FOR LOCAL SELF RELIANCE
MAIN STREET PROJECT
MEDIA ACCESS PROJECT

MEDIA LITERACY PROJECT
MEDIA ALLIANCE
MEDIA MOBILIZING PROJECT
MEDIA ACTION GRASSROOTS NETWORK
MEDIA AND DEMOCRACY COALITION
MOUNTAIN AREA INFORMATION NETWORK
NATIONAL ALLIANCE FOR MEDIA ARTS AND CULTURE
NATIONAL CONGRESS OF AMERICAN INDIANS
NATIONAL FEDERATION OF COMMUNITY BROADCASTERS
NATIVE PUBLIC MEDIA
RECLAIM THE MEDIA
THE OPEN SOURCE WIRELESS ASSOCIATION
PEOPLE ESCAPING POVERTY PROJECT
PEOPLE'S PRODUCTION HOUSE
PROMETHEUS RADIO PROJECT
PUBLIC KNOWLEDGE
PROMETHEUS RADIO PROJECT
RECLAIM THE MEDIA
RURAL BROADBAND POLICY GROUP
SOUTHWEST ORGANIZING PROJECT,
TEXAS MEDIA EMPOWERMENT PROJECT
THOUSAND KITES
TRIBAL DIGITAL VILLAGE

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IV. APPENDIX

Characteristics of Anchor Institutions

Main Street Project: MN Digital Justice Coalition

Hours:

- Open regularly beyond 9-5 business hours
- Open on weekends and holidays too (and not just Christian holidays)

Tiered time limits

- Dedicated computers that people can reserve for 2-3 hours
- Computers with a limit of one hour
- Computers with 30 min. limit
- Computers with 15 min. limit

Transportation:

Rural Specific:

- Within walking distance→no public transportation
- Located on stops already serviced by PICA, Head Start, Community Action Agencies, Meals on Wheels, Metro Mobility

Urban Specific

- Must be located in "zone" where people can transfers for "free"
- Accessible by one bus/train (access is not multiple transfers)
- Located on stops already serviced by PICA, Head Start, Community Action Agencies, Meals on Wheels, Metro Mobility
  Has a relationship or is a pre-existing Parks and Rec. Center or an institution with pre-existing afterschool programming

Family Friendly:

- Onsite Childcare
- Youth workers or youth counselors who are trained to work specifically with youth and adolescents
- Healthy and affordable snacks and meals available
- Dedicated hours for just "parents with school age children" so that parents and their kids can come in together and work online

Accommodations:

- Computers dedicated specifically to job seeking
- Computers dedicated specifically to E Government and public assistance services
    - Medicaid/Medicare
    - Food Stamps
    - SSI
    - HUD programs
    - TANF
    - Head Start
    - Social Security
    - Immigration
- Provide free printing—especially for homework, resumes, Welfare and Section 8 paperwork etc.
- Computers dedicated to use in languages other than English
    - Have special software for non-Latin language Vietnamese, Lao, Hmong, Somali
    - Have keyboards with keystrokes reconfigured to non Latin Language characters
- Computers specially dedicated to Health and Health Care related searches (Web M.D., processing claims for prescriptions, insurance claims, etc.)
- Carousels or docking-stations for people who have laptops (but need FREE internet and FREE printing) to plug-in

Special Needs:

- Multilingual Staff
- Specialists who can work with multiple literacy levels
- Must have handicap accessibility—and include at least 1-2 terminals that are adapted for use by the blind, deaf, and hard of hearing
- Stations where folks with disabilities can work with the assistance of PCA's and other a
- Hours specifically for Senior Citizens
- Staff that specifically know how to work with homeless adults
- Computer "stations" (chair, table and phone) for homeless adults so they have room for all their belongings as they look for housing and employment